

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN SECTION

DONALD HUTCHINS . Docket No. CR 04-30126-MAP
v. . Springfield, MA
CARDIAC SCIENCE . September 9, 2004
..... 11:38 a.m.

TRANSCRIPT OF HEARING HELD BEFORE
THE HONORABLE MICHAEL A. PONSOR,
UNITED STATES DISTRICT COURT JUDGE.

APPEARANCES:

For the plaintiff: Donald C. Hutchins, 1047 Longmeadow
Street, Longmeadow, MA 01106.

For the defendant: Randall T. Skaar, 4800 IDS Center, 80
South Eighth Street, Minneapolis MN
55402-2100.

Adam Basch, 33 State Street,
Springfield, MA 01103.

Alice Moran, CSR, RPR, RMR
Official Federal Court Reporter
1550 Main Street, Room 536
Springfield, MA 01103
Tel: 413-731-0086 Fax: 413-737-7333
amoran@prodigy.net

1 regard to the other question, quite honestly, I'm trying
2 to put Cardiac Science in a position, give them a little
3 leverage over Compliant because this whole case begs for
4 resolution, settlement.

5 I can live with a settlement from all the parties,
6 and Cardiac Science is going to be the one who -- if this
7 ever got to the SEC, if this ever got publicized, if they
8 are using a patent illegally -- they're in a whole heap
9 of trouble.

10 So they've been deceived by Compliant. I would look
11 upon them to go back to Compliant and say let's
12 straighten this thing out and let's settle it. And I
13 look upon your position as one -- quite honestly, if you
14 review my motion, that's not a huge concern to me. I'm
15 trying to give Cardiac Science a little leverage.

16 THE COURT: Now let me hear from Cardiac
17 Science now. You've had to sit here for quite a long
18 time while listening to Mr. Hutchins. Let's hear what
19 Cardiac Science has to say.

20 MR. SKAAR: Thank you, Your Honor. Good
21 afternoon.

22 THE COURT: Good afternoon.

23 MR. SKAAR: I think after reading everything
24 that Mr. Hutchins has submitted and listening to him
25 argue, it's pretty clear the beef is with not Cardiac

1 Science but with Compliant.

2 And I think if you read the agreements, it's pretty
3 apparent that the 7 1/2 percent that's really at the
4 bottom of this that Mr. Hutchins thinks he's entitled to,
5 that will never come from Cardiac Science no matter how
6 you read these agreements or look at it.

7 If that event was triggered to pay the 7 1/2 percent
8 to Mr. Hutchins, that would have to be paid by Compliant
9 or one of those entities surrounding Compliant.

10 THE COURT: Is Compliant a corporation, or what
11 kind of a beast is Compliant?

12 MR. SKAAR: Well, I thought you did a pretty
13 good job when you were explaining it all, but the
14 agreements we have show County Line Limited transferring
15 some IEP rights to another entity which became the CPR
16 Limited Partnership and then eventually County Line
17 became Compliant. So they stood in the shoes of County
18 Line so that's how the agreements, the way I read them,
19 kind of hook up.

20 So now Compliant was in partnership -- was a general
21 partner in a partnership with CPR Limited Partnership.
22 CPR Limited Partnership actually holds the IP assets of
23 Mr. Hutchins, among other things.

24 THE COURT: So this is not a corporation. It's
25 an assembly of people and other entities working together

1 in some kind of partnership?

2 MR. SKAAR: Well, they call themselves a
3 corporation.

4 MR. HUTCHINS: It is a Delaware corporation.

5 MR. SKAAR: They call themselves a corporation,
6 but they are as a corporation a general partner I believe
7 in another entity and it is complicated but I don't think
8 it's necessarily relevant to what's going on today.

9 The other fact that's interesting, and I know that
10 Mr. Hutchins has made a Rule 19 motion here to try to
11 bring in Compliant Corporation and I just received
12 yesterday from Compliant Corporation a courtesy copy of a
13 compliant that they have filed against Mr. Hutchins in
14 Ohio on these very same issues.

15 THE COURT: Is that in a federal district court
16 or the state court?

17 MR. SKAAR: State court. I have a copy here
18 with a coffee stain on it that I did this morning if
19 you'd like to have this copy, but basically it's asking
20 for declaratory judgment that they own the IP outright
21 and don't owe him any money.

22 So those issues are now being addressed elsewhere.
23 I think that will make it even harder now to bring
24 Compliant here under the first to file rules we have
25 because I think they are the first one to address that

1 issue head-on.

2 But when I look at this thing from -- and our motion
3 to dismiss has kind of all the underpinnings of the fact
4 that we're not the right party here. We don't have any
5 duty. You know, if there was a breach of a contract, it
6 happened before we got it. It happened when Compliant
7 didn't pay him the 7 1/2 percent, you know, if that's the
8 case.

9 Now they're alleging in their complaint, the Ohio
10 complaint, that no triggering event has yet taken place
11 to pay Mr. Hutchins the 7 1/2 percent. I don't know if
12 that's true or not, but again even if it were true,
13 Cardiac Science has no obligation to pay those dollars.

14 So if we address head-on now the temporary
15 restraining order, basically the injunction to try to
16 hold off some of the shares, you know, to ask for an
17 injunction to preserve your damage remedy is unusual
18 anyway. And I think it's an extraordinarily extreme
19 remedy that somehow that he's entitled to preserve his
20 damage pool even though he hasn't proved his case here
21 and doesn't have a judgment yet, and I don't think I have
22 ever seen anything quite like that before.

23 So first to say irreparable harm and some of these
24 other issues that are precedent to proceeding to actually
25 entering the order, I don't think are there. I mean,

1 Cardiac Science has assets. And even if they didn't, Mr.
2 Hutchins isn't a creditor yet. So why should we be
3 taking this extraordinary remedy and interfering with a
4 lot of stock and a big sale just to preserve a damage
5 pool for Mr. Hutchins when he's not yet a creditor?

6 I don't see how his case is different than any other
7 breach of contract -- hundreds of breach of contracts and
8 patent infringement cases that are out there. There's
9 nothing special about this one, at least nothing that
10 he's pled.

11 And then there's this problem with the lock-up
12 agreement that I think Mr. Hutchins actually recognizes.
13 On his proposed order he says "The court orders Cardiac
14 Science and the lock-up trustee," you know, not -- well,
15 he acknowledges the fact that we need jurisdiction over
16 the lock-up trustee because in fact Cardiac Science
17 doesn't have the stock anymore. It's held in trust and
18 that's of course what the two companies did. They didn't
19 want either one of them to have control over it. They
20 had to sit in trust and then was released on this timing
21 schedule.

22 So Cardiac Science doesn't have -- there's nothing
23 to enjoin Cardiac Science from doing. Their duties are
24 done. They had to pay their stock just like writing the
25 check for this stuff, and therefore there's nothing to

1 enjoin anyway.

2 But I think a more serious question is why would we
3 be doing this? What is so extraordinary about this case
4 that we have to somehow create a damage pool for Mr.
5 Hutchins even though we're so far away from him being a
6 judgment of creditor of any kind.

7 THE COURT: Well, I can see one justification
8 and then I can see a problem with that justification. I
9 mean, one justification is that this is just a little bit
10 like an attachment. He thinks that he's going to get a
11 judgment against Compliant eventually I guess because the
12 papers say that Price Waterhouse says that Compliant or
13 maybe it says that your client doesn't have much in way
14 of assets.

15 MR. SKAAR: That's my client.

16 THE COURT: There's an asset here and he's
17 trying to get a hold of it with the idea that he will
18 eventually obtain judgment. And that if he doesn't grab
19 the asset now, there will be no way to pay the judgment.
20 So it's like seizing somebody's equity in somebody's
21 house I suppose by putting a lien. If somebody's dog
22 bites your kid and you bring a lawsuit, they don't have
23 very much money so you file a motion to attach their
24 house so when you obtain judgement, you'll have something
25 to collect against.

1 The problem in this case is that the only defendant
2 is Cardiac Science and the assets that's trying to be
3 seized is not Cardiac Science's assets. Even if Mr.
4 Hutchins eventually obtained a judgment from you, you
5 would not be able to pay that judgment out of the stock
6 that you pledge to Compliant.

7 MR. SKAAR: That's correct.

8 THE COURT: So Mr. Hutchins is essentially
9 trying to seize a Compliant asset to secure an eventual
10 judgment which he thinks he will get against your client.

11 MR. SKAAR: Right.

12 THE COURT: And that is kind of an unusual
13 approach to the situation.

14 MR. SKAAR: And I think he recognizes that by
15 trying to get Compliant into the case now. He realizes
16 that this is really Compliant. They're the ones entitled
17 to this stuff and not Cardiac Science.

18 The other problem, of course, is we don't have any
19 kind of idea of the kind -- I mean, there's going to be a
20 huge dispute here I imagine eventually between Compliant
21 and Mr. Hutchins about the value of this intellectual
22 property. He's saying the wholesale is the value of the
23 intellectual property and I'm sure Compliant is going to
24 say, I'm sorry, it was a very small percentage.

25 So there is going to be this battle for how much are

1 we actually going to enjoin and preserve for Mr. Hutchins
2 even if there was a, you know, a reason to do that,
3 which I don't see in this case.

4 THE COURT: All right. Let's move onto another
5 topic then and that's your motion to dismiss. The motion
6 for TRO is almost certainly going to be denied. Mr.
7 Hutchins has said that's not that big a deal to him
8 anyway even if it were denied, but I don't think that
9 there has been an adequate showing of likelihood of
10 success on the merits here against Cardiac Science, and I
11 don't think that the asset that's sought to be seized is
12 one that Cardiac Science could use to indemnify itself
13 even if there were a judgment obtained against Cardiac
14 Science.

15 So for those reasons the motion for temporary
16 restraining order will be denied, and I'm afraid the
17 motion to join parties is going to have to be denied
18 based upon local Rule 15.

19 That leaves me with your motion to dismiss and Mr.
20 Hutchins said that the big picture is you're selling
21 something that belongs to him, and whether or not it fell
22 off the back of the truck or you picked it up and started
23 selling it or whatever, he says it got to you through an
24 improper procedure.

25 You don't really have any entitlement to sell that

1 product and you're selling that product and he wants an
2 opportunity to come in here and prove to some kind of
3 fact finder that what you have belongs to him. You may
4 have gotten it from somebody else but they stole it from
5 him, gave it to you and you're now exploiting it, and he
6 wants an opportunity, not today, but he wants an
7 opportunity to take discovery and present his case on
8 that point and you say it should be dismissed right from
9 the threshold. Tell me why.

10 MR. SKAAR: It goes back to the agreements with
11 Compliant and with County Line Limited and all these
12 other parties on their face transfer Mr. Hutchins'
13 interests in the same intellectual property he's now
14 asserting that we are infringing to a party that we
15 bought it from.

16 And all these contracts, and the 1994 contract in
17 particular, has all these conditions precipice saying,
18 hey, if you're going to take your intellectual property
19 back, you got to jump through these hoops. He can't show
20 he's done that, and I think that's a very minimum on the
21 pleading to state that at least he has done that and
22 followed the conditions in the contract.

23 And, in fact, I think there's allegations in this
24 complaint that show that the parties don't believe that's
25 the case that there's a dispute there, number one,

1 because Compliant continued to pay him and even attached
2 a check that was after the alleged time that he took the
3 IP back for a royalty check on the very intellectual
4 property.

5 THE COURT: This is the December 2003 check?

6 MR. SKAAR: That's correct. And, of course,
7 there's nothing in the record but, you know, Cardiac
8 Science continues to pay him royalties under the very
9 same agreement. So we think that we own that. I don't
10 think he's cashing them but he's getting them.

11 So there is a dispute under the agreement that has
12 to be handled under the agreement, and there's condition
13 precedent under the agreement and the mandatory
14 arbitration clause under the agreement. And again this
15 screams all for Compliant to be here because really this
16 needs to be -- he is alleging that breach happened when
17 Compliant owned it, and I think if Mr. Hutchins can get
18 through all this and show that in fact he did take his IP
19 back, then he could sue us for patent infringement
20 because we wouldn't have a viable license. Of course,
21 we'd sue Compliant for indemnification because we just
22 paid a bunch of money for it, but this is way too
23 premature.

24 He has to show -- and now Compliant has sued him in
25 Ohio on that very same issue saying we own it. There are

1 underlying factors here that have to be dealt with before
2 Cardiac Science gets thrown in the mix.

3 THE COURT: Isn't Mr. Hutchins's position
4 though not that he ever had to take it -- he doesn't have
5 to take it back because he never lost it in the first
6 place? That it was never properly transferred I guess to
7 Compliant or Compliant never properly transferred it to
8 you and therefore he doesn't take it back. He doesn't
9 have to take it back because Compliant never actually did
10 transfer it to you, ever actually gave it to you?

11 MR. SKAAR: I didn't understand that to be his
12 position. That's an interesting position. I read the
13 document that's the 1994 agreement that says that he's a
14 part of that and he did assign his interests there so at
15 least they left there.

16 Now if he ever took them back, that agreement at
17 least states on its face that he assigned his
18 intellectual property rights, and he's never shown that
19 he followed the condition precedent in the 1994 agreement
20 to take that IP back.

21 THE COURT: All right.

22 MR. SKAAR: I think that needs to be dealt
23 with, and I think if that's all dealt with, that takes
24 care of the breach of contract and the copyright and
25 patent infringement claims, that's Counts 1, 2, 3, and 5

1 -- or I'm sorry -- 6.

2 That leaves us with the negligence counts and I
3 think they just they fail on their face because we didn't
4 have a duty, any duty. We didn't deal with Mr. Hutchins.
5 We dealt with Compliant and County Line Limited and CPR
6 Prompt Limited Partnership. We didn't deal with Mr.
7 Hutchins. We didn't have a duty to him.

8 And, you know, the fact that he doesn't think they
9 did their due diligence, well, I'm sure Cardiac Science
10 hired an M&A firm to do their due diligence. I'm sure
11 they did. I can't imagine that they would spend that
12 kind of money without knowing what they were buying.
13 But, again, that's maybe the shareholders' problems of
14 Cardiac Science but not Mr. Hutchins' concern and he
15 doesn't have standing to pursue those claims now.

16 THE COURT: All right. Let me hear from Mr.
17 Hutchins on this motion to dismiss and then we will have
18 to wrap it up here today.

19 I'm going to deny, as I said, the motion for
20 temporary restraining order for the reasons that I've
21 already stated. It may be that Compliant will have to
22 come in here but you will have to file a motion that's in
23 compliance with local Rule 15 of our district court here
24 and that hasn't been done so far. So I'm going to deny
25 the motion to join Compliant.